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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,673	12/02/2003	Walter Strippgen	3994-7-CIP	5731
22442	7590	11/03/2005	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			WOLFE, DEBRA M	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,673

Applicant(s)

STRIPPGEN ET AL.

Examiner

Debra Wolfe

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14, 16-22 and 27-29 is/are rejected.
- 7) ☒ Claim(s) 11-13, 15, 23-26, 30 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____



DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: longitudinal extent, E on page 13, line 23; cover plate 398 on page 20, line 4; and free end 508 on page 25, line 7. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

1. The disclosure is objected to because of the following informalities.
 1. Page 12, line 14 states "...the wing nut 208 in the opening 208..."
 2. Page 17, line 18 states " Integral with an upper surface 328 (Fig. 6)..." the integral with an upper surface appears on Fig. 7.

Appropriate correction is required.

2. Claim 19 is objected to because of the following informalities: claim 19 line 9 "(a) through (c)" it should read " (a) through (h)". Appropriate correction is required.



Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1, 8, 19, 22, and 27-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "substantially" is does not distinctly claim the direction the forces are to be applied to the rod.
2. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 9 does not provide any structure to the claimed apparatus and thereby is not further limiting.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

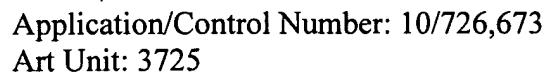
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.



4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
1. Claims 1-10, 14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoth, III (U.S. Patent # 6,298,704 B1) in view of Yapp (U.S. Patent # 5,548,985) in further view of Parkway Products, INC. Hoth, III discloses a portable bending apparatus with transaxial workpiece loading having a first component (See FIGs below) with a first element (drive roller 46) that has a channel (See FIGs below) which revolves when in contact with an elongated workpiece (116) and also applies a first continuous force in a lateral direction to the length of the elongated workpiece (116), and an adjuster (toggle handle 104) with a shaft (rod 110)(See col. 3, line 20) having an opposite end that contacts a subassembly (See FIGs below) having a first axle (56) about which the first element (drive roller 46) rotates and the shaft (rod 110) moves the first element (drive roller 46) into position to contact the elongated workpiece (116) and a crank (handle 72) that urges the first element to traverse the length of the rod; second and third elements (idler rollers 28, 30) having a channel (See FIGs below) that also revolve when in contact with an elongated workpiece (116) and applies continuous respective counter forces to the elongated workpiece (116) during the application of the first force. Whether the distance between the second and third elements is 3 to 4 inches or not the first element (drive roller 46) is still capable of contacting the rod midway between rod contacts of the second and third elements (idler rollers 28, 30) (See col. 2, line 46) as disclosed by Hoth, III. Col. 3, line 27 of Hoth, III also discloses the apparatus can be transported manually by one person.



Hoth, III discloses the invention substantially as claimed except for wherein the device curves an elongated surgical workpiece. However, Yapp teaches it is known in the art to use a portable rod bender for the purpose of forming surgical implants in the operating room. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention



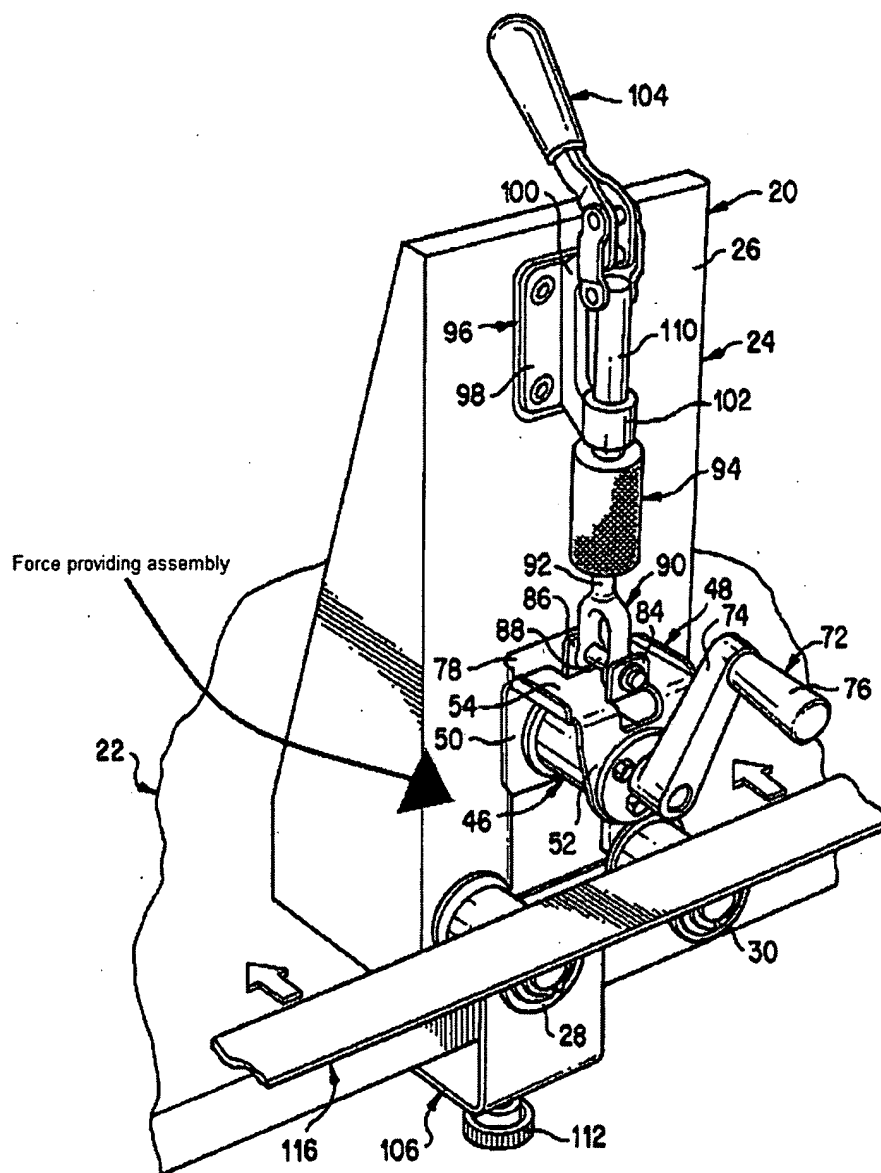
was made to use the portable apparatus of Hoth, III with an elongated surgical workpiece as taught by Yapp in order to produce a curve in an elongated surgical workpiece.

Hoth, III discloses the invention substantially as claimed except for wherein at least one of the first, second, or third elements include a polyetherimide or composite thereof. However, Parkway Products, INC teaches the use of polyetherimide for industrial uses (<http://www.parkwayproducts.com/ultem-polyether-imide.htm>). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the rollers of the first, second and third elements of Hoth, III with a polyetherimide or composite thereof as taught by Parkway Products, INC in order to provide efficient rollers for curving an elongated workpiece.

2. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoth, III (U.S. Patent # 6,298,704 B1) in view of Yapp (U.S. Patent # 5,548,985) in further view of Parkway Products, INC. Hoth, III discloses a portable bending apparatus with transaxial workpiece loading having a force providing assembly (See FIG below) with first rod contacting portion (drive roller 46) that apply a first continuous force; second and third rod contacting portions (idler rollers 28, 30) that apply counter forces to a rigid elongated workpiece (116); and a rod moving mechanism (handle 72), for moving the surgical rod relative to the second and third rod contacting portions (idler roller 28, 30), that also has a common component (carriage 48) with the force providing assembly that houses a drive roller (46). The first continuous force is also applied laterally to a lengthwise direction of the elongated workpiece (116) by the first rod contacting portion (drive roller 46). Hoth, III also discloses a base (flat plate 26) that



supports the force providing assembly, the first and second contacting portions and the apparatus.



Hoth, III discloses the invention substantially as claimed except for wherein the device curves an elongated surgical workpiece. However, Yapp teaches it is known in the art to use a



portable rod bender for the purpose of forming surgical implants in the operating room. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the portable apparatus of Hoth, III with an elongated surgical workpiece as taught by Yapp in order to produce a curve in the elongated surgical workpiece.

Hoth, III discloses the invention substantially was claimed except for wherein at least one of the first, second, or third elements includes a plastic having the following characteristics:

- (a) a tensile strength of at least 15,000 psi;
- (b) an elasticity of at least 420,000 psi;
- (c) a deflection temperature of at least 390 psi;
- (d) coefficient of friction of between 0.43 and 0.45;
- (e) a Rockwell Hardness of at least 100 "M" Scale units;
- (f) an elasticity of at least 420,000 psi;
- (g) a flexural strength of at least 12,000 psi; and
- (h) a compressive strength of at least 19,000 psi;

However, Parkway Products, INC teaches the use of polyetherimide that has the above required characteristics for industrial uses (<http://www.parkwayproducts.com/ultem-polyetherimide.htm>). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the rollers of the first, second and third elements of Hoth, III with a polyetherimide or composite thereof as taught by Parkway Products, INC in order to provide efficient rollers for curving an elongated workpiece.

Allowable Subject Matter

Claims 11-13, 15, 23-26, and 30-31 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.



Conclusion

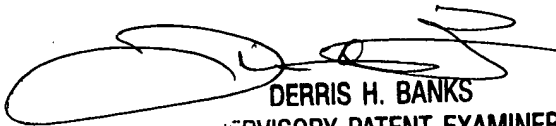
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. U.S. Patent # 5,490,409 to Weber

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Debra Wolfe whose telephone number is (571) 272-1904. The examiner can normally be reached Monday - Thursday 6am - 3:30pm with alternating Fridays 6am - 2:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DERRIS H. BANKS
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